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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/757,294	01/09/2001	Shinya Kimura	70551/55532	6805
21874	7590	03/28/2005	EXAMINER	
EDWARDS & ANGELL, LLP			OSMAN, RAMY M	
P.O. BOX 55874			ART UNIT	PAPER NUMBER
BOSTON, MA 02205			2157	

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

me

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/757,294	KIMURA ET AL.	
	Examiner	Art Unit	
	Ramy M Osman	2157	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: NONE.
Claim(s) objected to: NONE.
Claim(s) rejected: 1-24.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

DETAILED ACTION

Status of Claims

1. This communication is responsive to the amendment filed on February 5, 2005. Claims 1-24 are pending. The rejections stand based on the arguments presented below.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-24 remain rejected under 102(e) anticipated by Agraharam (US Patent No 6,407,988) since the arguments addressed in the response filed 2/5/2005 are not persuasive, as explained below.
4. Please refer to previous final action dated 11/30/2004 for detailed rejection under 102(e).

Response to Amendment

5. Examiner acknowledges the amendment to claim 13, filed 2/5/2005, which corrected a misspelling. Claims were presented with proper indentation and therefore the objection to the claims is withdrawn.

Response to Arguments

6. Applicant's arguments filed 2/5/2005 with respect to claims 1-24 have been fully considered but they are not persuasive.

7. Applicant argues that the finality of the rejection, dated 11/30/2004, is premature. However, in the mentioned rejection, the examiner acknowledged the amendment that was filed on 8/31/2004 and indicated finality on PTO Form 326. The amendment failed to place the application in condition for allowance and therefore the final rejection was necessitated by amendment and was properly issued as the second action (see MPEP 706.07(a)). The finality will be withdrawn only upon a timely filing of an RCE (see MPEP 706.07(h) section V). Request for withdrawal of finality is denied (see MPEP 706.07 (e)).

8. Applicant argues that Agraharam does not disclose the “distinctly claimed communication device that sends preselected data received from the server to all of the mobile terminals located within its communication range” (see Remarks pg 28).

Firstly, the word “all” is not in the claims. If applicant asserts that sending data to *all* terminals is not taught by Agraharam then the claim language must reflect this. Claimed subject matter, not the specification, is the measure of the invention. Disclosure contained in the specification cannot be read into the claims for the purpose of avoiding prior art. In re Sporck, 55 CCPA 743, 386 F.2d 924, 155 USPQ 687 (1986); In re Self, 213 USPQ 1, 5 (CCPA 1982); In re Priest, 199 USPQ 11, 15 (CCPA 1978).

Secondly, sending data to terminals within communication range is disclosed by Agraharam where he states that each MAIN provides mobility services to mobile hosts (column 3 lines 12-31). This means that the MAINs route the data to the mobile hosts (see also column 5

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lines 33-45 and column 6 lines 7-10). There are also routers (Figure 1 # 107-1,-2,-3,-4,-5, -6) that are all used to interconnect and route data from the MAINs to the mobile hosts (column 3 lines 42-46 & 55).

9. Applicant argues that Agraharam does not disclose the “distinctly claimed detection device that detects return signals from any mobile terminals within the communication range of the communication device” (see Remarks pg 28).

Firstly, this language is not found in the independent claims. The independent claims broadly state: “a detection device that detects any mobile terminals present within said range of communication of said communication device”.

Secondly, detecting mobile terminals is disclosed by Agraharam where he states that mobile devices are registered to new networks whenever detected (column 4 lines 40-60).

10. Applicant argues that the Agraharam reference does not teach the server “determines how incoming information is to be directed” (see Remarks pg. 30). Applicant refers to the mobility server of Agraharam, citing column 7 lines 45-53, and states that it is only a central repository of address information. However, applicant has erroneously isolated the mobility server from the rest of Agraharam disclosure. Agraharam discloses MAINs: Mobility-Aware-IP-Networks (column 2 lines 45-46 and column 3 lines 12-31). MAINs are what route data to the mobile hosts. The mobility server is located within the MAIN and assists in determining how to route the data to the mobile hosts (column 4 lines 17-25 and column 9 lines 45-56). Therefore, Agraharam does disclose determining how incoming information is to be directed.

11. Applicant further argues that Agraharam “avoids the necessity of incoming information having to be ‘passed through’ the home network when the destination mobile terminal is

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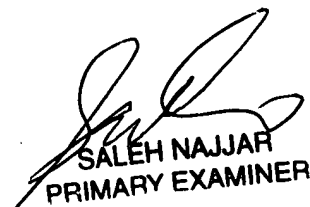
associated with a foreign network” (see Remarks pgs 31-32). It is unclear if applicant is arguing that this feature is their invention and Agraharam fails to teach it. Nonetheless, this feature is not in the claims. Claimed subject matter, not the specification, is the measure of the invention. Disclosure contained in the specification cannot be read into the claims for the purpose of avoiding prior art. In re Sporck, 55 CCPA 743, 386 F .2d 924, 155 USPQ 687 (1986); In re Self, 213 USPQ 1, 5 (CCPA 1982); In re Priest, 199 USPQ 11, 15 (CCPA 1978).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramy M Osman whose telephone number is (571) 272-4008. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RMO
March 22, 2005


SALEH NAJJAR
PRIMARY EXAMINER